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WHITEPAPER

H-1B REGISTRATION SEASON: *What Your Employer Must Tell You; And What They Don't Have To*

A practical guide to the legal obligations your employer carries toward you during H-1B registration, the rights you can exercise independently, and how the wage-weighted selection system and the \$100,000 supplemental fee change the picture for the professionals going through it.

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Executive Summary

H-1B registration season is when immigration status moves from a background concern to a front-of-mind one for nearly every H-1B holder and F-1 student hoping to transition to work authorization. It is also, in most years, the single moment in the immigration calendar when the largest number of employer-sponsored professionals are thinking about their status at once. Yet most of the people going through it are navigating it without the one voice that speaks for them specifically: their own attorney.

Your employer's immigration attorney manages registration on behalf of the company. Their work covers workforce compliance, LCA filing obligations, and the company's aggregate outcomes across its H-1B population. What that engagement does not – and structurally cannot – cover is your individual rights during registration, the obligations your employer carries toward you personally, and the independent options available to you regardless of this year's outcome.

This whitepaper walks through H-1B registration season from the employee's side: what your employer is legally required to do, what they are not required to tell you, and what two major recent changes – a new wage-weighted selection system and a contested \$100,000 supplemental fee – mean for you specifically.



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1 SECTION

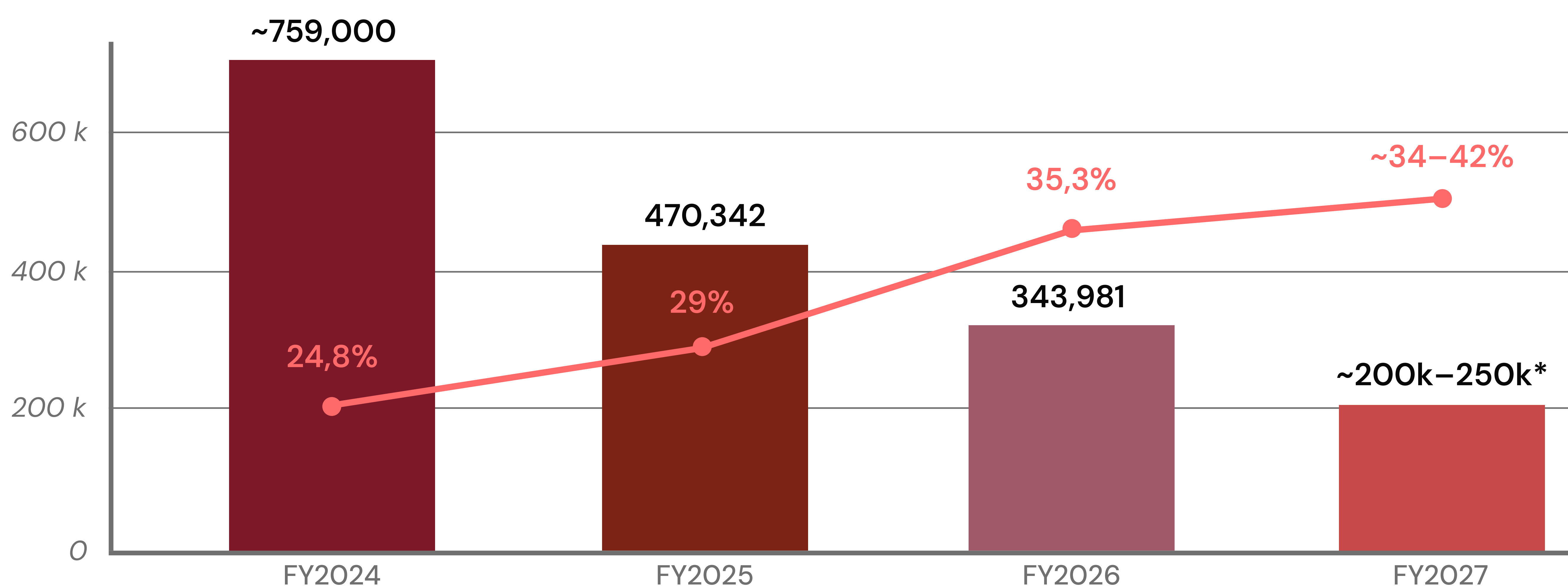
H-1B Registration – What It Is, and What Recently Changed

1.1 The Registration System, Briefly

USCIS has used an electronic pre-registration system since FY2021, replacing the earlier process in which full H-1B petitions were submitted before any lottery ran. Under the current system, employers register each prospective H-1B beneficiary during a roughly two-week window, pay a \$215 registration fee per beneficiary, and wait for lottery selection before filing a full petition.

H-1B REGISTRATION & SELECTION, FY2024–FY2027

Eligible registrations (bars) vs. selection rate (line). FY2027 figures are early estimates from immigration-bar reporting; USCIS's final published tallies may differ.



*FY2027 figures are attorney-community estimates, not final confirmed USCIS totals, and reflect the first cycle under wage-weighted selection. Red line = approximate overall selection rate (unique beneficiaries selected ÷ unique beneficiaries registered). Sources: USCIS FY2024–FY2026 cap season data; Fragomen, Ogletree, and Envoy Global reporting on FY2026 final numbers; industry estimates for FY2027.



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1.2 The Two Processes Running in Parallel

H-1B registration actually involves two separate processes that happen at the same time but serve different interests:

	EMPLOYER REGISTRATION & LOTTERY PARTICIPATION	EMPLOYEE RIGHTS & INDEPENDENT OPTIONS
Who it serves	The employer's workforce plan	The individual professional's immigration future
Managed by	The employer's immigration counsel	Independent counsel — or no one, if none is retained
What it determines	Whether the company has a selected registration for this employee's slot	What the employee can do independently, before, during, and after registration season

The employer's attorney manages the first process with real expertise and attention. The second process gets attention only when the employee retains independent counsel; and for most H-1B professionals, it gets none at all.

2 SECTION

Two Changes That Reshaped Registration Season

2.1 Wage-Weighted Selection In effect since FY2027

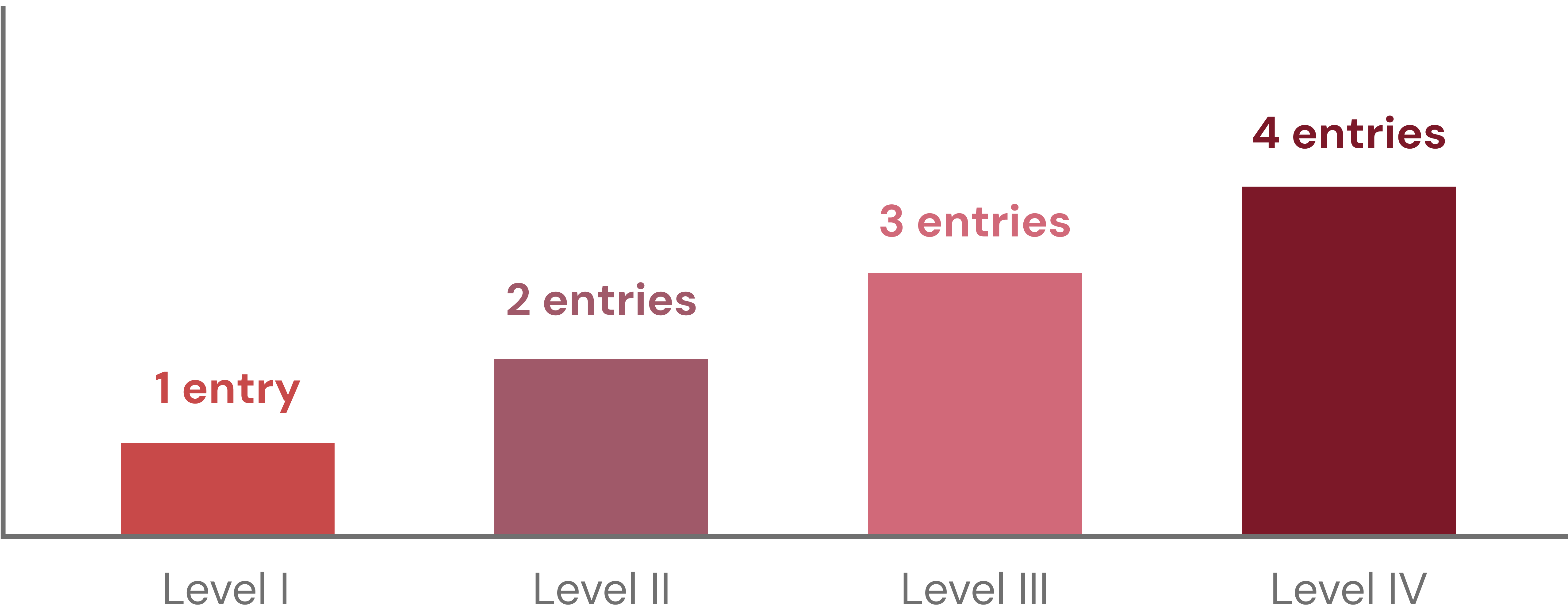
On December 29, 2025, DHS published a final rule replacing the longstanding random H-1B lottery with a weighted selection process, effective February 27, 2026. The rule applied for the first time to the FY2027 registration cycle (registration in March 2026) and continues to govern selection going forward.

Under the rule, USCIS assigns each unique beneficiary a wage-level weighting based on the highest Occupational Employment and Wage Statistics (OEWS) wage level the offered salary equals or exceeds, for the relevant occupation and area of intended employment; generally, up to four tiers. Registrations at higher wage levels receive more entries in the selection pool, which increases (but does not guarantee) selection odds; entry-level (Level I) offers still participate, but with fewer weighted entries than higher-level offers. If a beneficiary has multiple registrations at different wage levels, USCIS allots that beneficiary to the lowest wage level among them; so having more than one employer register you does not let you claim a higher-tier weighting.



HOW WAGE-WEIGHTED SELECTION WORKS

Illustrative entries per wage tier under the DHS final rule (90 Fed. Reg. 60,864, Dec. 29, 2025). Actual weighting is applied by USCIS based on OEWS wage levels for the relevant SOC code and area of intended employment.



Source: DHS/USCIS, "Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions," 90 Fed. Reg. 60,864 (Dec. 29, 2025); USCIS FY2027 registration guidance (Jan. 30, 2026).



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2.2 The \$100,000 Supplemental Fee Contested – status may change

On September 19, 2025, a Presidential Proclamation (No. 10973) imposed a one-time \$100,000 fee on new H-1B petitions for beneficiaries who are outside the United States and require consular processing, applicable to petitions filed on or after September 21, 2025. It does not apply to renewals, extensions, or petitions for beneficiaries already in the U.S. changing status.

This fee has been the subject of active litigation. As of this writing, a federal district court (D. Mass., June 8, 2026) vacated the policy implementing the fee on the grounds that it functioned as an unauthorized tax and violated the Administrative Procedure Act; the First Circuit Court of Appeals declined to stay that ruling pending the government's appeal (July 24, 2026). The fee is therefore not currently being collected, but the litigation is ongoing, and the underlying Proclamation is separately set to expire by its own terms roughly one year after issuance unless renewed or reissued.

This is a live, moving legal issue.

Do not rely on this whitepaper for the fee's current status. Before advising a client – or making a personal filing decision – confirm the fee's status directly with I.S. Law Firm or check current USCIS and Department of State guidance.



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3 SECTION

What Your Employer Is Legally Required to Tell You

3.1 The Employer Obligation Framework

H-1B regulations impose specific obligations on sponsoring employers, designed to protect the H-1B beneficiary from exploitation and status violations. These are not routinely explained to employees by employer immigration counsel, whose engagement is focused on the employer's compliance.



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EMPLOYER OBLIGATION	REGULATORY SOURCE	WHAT IT MEANS FOR YOU
Pay the required wage	20 C.F.R. § 655.731	You must be paid at least the prevailing wage or the actual wage paid to similarly employed workers, whichever is higher. DOL enforces this.
Pay you during "benching"	20 C.F.R. § 655.731(c)(7)	An employer generally cannot place you in nonproductive status for employer-caused reasons and stop paying you. Benching is one of the most common H-1B wage complaints.
Offer return transportation costs if terminated early	INA § 214(c)(5)(A); 8 C.F.R. § 214.2(h)(4)(iii)(E)	If you are involuntarily terminated before your H-1B period ends, current guidance treats your employer as obligated to offer — and, for a bona fide termination, to actually cover — reasonable return transportation costs. Does not apply to voluntary resignation.
Post notice of the LCA	20 C.F.R. § 655.734	Your employer must post or electronically circulate notice of the LCA to affected workers on or before the filing date, kept up for at least 10 business days. You may inspect the LCA and the Public Access File.
Notify USCIS of termination	8 C.F.R. § 214.2(h)(11)	Your employer must withdraw the petition upon termination. Failure to do so doesn't extend your status, but it creates employer exposure.
Maintain the Public Access File	20 C.F.R. § 655.760	A file with the LCA, wage documentation, and occupational classification must be available for public inspection.



3.2 What Your Employer Does Not Have to Tell You

Employer obligations under H-1B law are procedural and wage-focused. They do not include any duty to advise you on your personal immigration options. Specifically, your employer is not required to:

- Flag an error in your H-1B approval notice that could affect future filings
- Advise you on your eligibility for NIW or EB-1A self-petition categories
- Explain your AC21 portability rights in plain terms
- Tell you what happens to your priority date if you change employers
- Advise you on your options if you are not selected in the lottery
- Explain the PERM job description in a way that lets you assess its portability implications
- Tell you when its own attorney has identified a filing risk the company has chosen not to address

The employer disclosure gap:

H-1B law creates real employer obligations around wages and LCA compliance. It creates almost no obligation for employers to provide individual immigration strategy advice. The space between what employers must tell you and what you may need to know to protect your own immigration future is where independent counsel operates.



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4 SECTION

The Rights H-1B Employees Have; And Rarely Exercise

4.1 The Public Access File; An Underused Right

Every H-1B employer must maintain a Public Access File containing the LCA, the wage rate for the position, prevailing wage documentation, and occupational classification information. Any member of the public – including you – may ask to inspect it. Reviewing it can show you: the occupational classification used for your LCA, which affects portability analysis; the wage level assigned to your position; the prevailing wage determination; and whether the LCA matches your actual work location and role.



4.2 The Right to Report H-1B Violations

H-1B employees may file complaints with the Department of Labor's Wage and Hour Division regarding LCA violations, including benching, wage shortfalls, and failure to post the LCA. Retaliation against an employee for filing a DOL complaint is itself a violation. Most H-1B professionals are unaware this right exists, and even fewer have consulted independent counsel about whether an employer's conduct might raise LCA concerns.



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4.3 The Right to Independent Legal Representation; At Any Time

No rule, regulation, or employer policy can prevent an H-1B employee from retaining independent immigration counsel. You may consult an attorney entirely separate from your employer's immigration program at any time, without your employer's knowledge or consent, and that attorney may advise you on your full situation; including options that don't align with your employer's preferences. This right is absolute, and it is rarely exercised, mostly because no one in the employer-sponsored ecosystem has a reason to tell you it exists.



5 SECTION

What Independent Counsel Can Provide During Registration Season

5.1 The Pre-Registration Strategic Review

A pre-registration review looks at where you currently stand – status, pending filings, and independent options – before lottery results arrive and before circumstances start driving decisions instead of planning. A review from I.S. Law Firm's SBO4 practice typically covers:

1 – Status & cap-gap analysis

Current H-1B status validity and cap-gap review for F-1 OPT holders.

2 – PERM / I-140 review

Status review and portability window assessment.

3 – NIW & EB-1A eligibility

Assessed independent of your current employer's program.

4 – O-1A eligibility

As a registration alternative or contingency.

5 – Priority date & timeline modeling

Multi-year green card timeline analysis.

6 – Employer-change risk mapping

For any transitions planned in the next 12-24 months.



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5.1 The Pre-Registration Strategic Review

After selection notices go out (typically in late March), the right next step looks different depending on the outcome:

OUTCOME	EMPLOYER ATTORNEY FOCUS	INDEPENDENT COUNSEL FOCUS
Selected — cap-subject	Full petition filing; LCA compliance; company petition strategy	Employee rights under the new H-1B; portability implications; concurrent I-140 or NIW strategy
Selected — advanced degree	Cap-exempt petition filing strategy	Start-date optimization; cap-gap status bridge for F-1 holders; independent green card analysis
Not selected — has I-140	Company workforce plan if employee can't remain on H-1B	Cap-exempt H-1B options; O-1A; TN; NIW; cap-gap bridge
Not selected — no I-140	Company contingency planning	O-1A petition; NIW self-petition; E-3; TN; L-1 analysis; status bridge strategy



Sources

Source	Reference
USCIS	H-1B Cap Season Registration & Selection Data (FY2024–FY2026)
DHS / Federal Register	"Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions," 90 Fed. Reg. 60,864 (Dec. 29, 2025)
The White House	Presidential Proclamation 10973 (Sept. 19, 2025)
U.S. District Court, D. Mass.	Order vacating DHS policy implementing the \$100,000 fee (June 8, 2026)
U.S. Court of Appeals, First Circuit	Order denying government's motion to stay (July 24, 2026)
U.S. Department of Labor	LCA Requirements, 20 C.F.R. Part 655, Subpart H; Wage & Hour Division H-1B Fact Sheet
Immigration and Nationality Act	§ 212(n) — LCA Requirements; § 214(c)(5)(A) — Return Transportation
USCIS Policy Manual	Vol. 2, Part F, Ch. 5 (AC21 Portability)
USCIS	Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016); 8 C.F.R. § 204.5(h) (EB-1A)
American Immigration Lawyers Association (AILA)	Published practice guidance on H-1B electronic registration



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